

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ELLA JANE McCRAY,

PLAINTIFF,

VS.

**CITY OF EUFAULA, ALBAMA,
STEVE HANNERS, and DAVID
DEBOSE,**

DEFENDANTS.

*
*
*
*
*
*
*
*
*
*

CASE NO: 2:06-CV-309-MHT

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, ELLA JANE McCRAY, by and through her undersigned counsel, Benjamin E. Meredith, and represents unto this Honorable Court as follows:

STATEMENT OF JURISDICTION

1. This is a civil action seeking damages against Defendants for committing acts, under color of law, which deprived Plaintiff of rights secured under the Constitution and laws of the United States; for conspiring for the purpose of impeding and hindering the due course of justice, with intent to deny Plaintiff equal protection of laws; and for refusing or neglecting to prevent such deprivations and denials to Plaintiff.

2. The United States District Court retains jurisdiction of this action pursuant to 42 U.S.C. Section 1983, 28 U.S.C. Section 1343 and 28 U.S.C. Section 1331

STATEMENT OF PARTIES

3. Plaintiff, ELLA McCRAY, is over the age of twenty-one years, a resident citizen of Barbour County, Alabama AND is subject to the jurisdiction of this Court.

4. Defendant, THE CITY OF EUFAULA, is a Municipal Corporation located in

Barbour County, Alabama AND is subject to the jurisdiction of this Court.

5. Defendants, STEVE HANNERS and DAVID DEBOSE were police officers employed by the Eufaula Police Department at all times relevant to this Complaint. Defendants STEVE HANNERS and DAVID DEBOSE are over the age of twenty-one years, AND are subject to the jurisdiction of this Court.

FACTUAL ALLEGATIONS

6. On or about March 16, 2004, the Eufaula Police Department, by and through Defendants, STEVE HANNERS and DAVID DEBOSE, made a telephone call to the residence of the Plaintiff herein. The Defendants did not identify themselves as the Eufaula Police Department or as officers of said department and asked if Tonya McCray lived at the Plaintiff's residence. The Plaintiff responded "no" and hung up the telephone.

7. Approximately ten (10) to fifteen (15) minutes later, the Eufaula Police Department, by and through Defendants, STEVE HANNERS and DAVID DEBOSE, made another telephone call to the residence of the Plaintiff herein. Again, the Defendants did not identify themselves as the Eufaula Police Department or as officers of said department, and asked for Tonya McCray and then asked if they were calling the McCray's residence.

8. Approximately ten (10) to fifteen (15) minutes later, the Eufaula Police Department, by and through Defendants, STEVE HANNERS and DAVID DEBOSE, made another telephone call to the residence of the Plaintiff herein. Again, the Defendants did not identify themselves as the Eufaula Police Department or as officers of said department. The Defendants asked for Ashley McCray and informed the Plaintiff herein that they had a package for Ashley McCray. The Plaintiff herein informed Defendants that Ashley McCray was her son and that they could bring the package to her. Defendants then informed the Plaintiff herein that she could not sign for the package.

9. Approximately ten (10) to fifteen (15) minutes later, the Eufaula Police Department, by and through Defendants, STEVE HANNERS and DAVID DEBOSE, made another telephone call to the residence of the Plaintiff herein. Defendants, STEVE HANNERS and DAVID DEBOSE identified themselves as employees of the United Parcel Service (UPS) and informed the Plaintiff that she could in fact sign for the package for her son and that they would bring the package to her. The Eufaula Police Department, by and through Defendants, STEVE HANNERS and DAVID DEBOSE, further informed the Plaintiff that they would be in a white pick-up truck as opposed to a brown UPS truck.

10. Defendants, STEVE HANNERS and DAVID DEBOSE of the Eufaula Police Department arrived at the residence of Plaintiff carrying a package and a paper, neither of which were addressed to the Plaintiff. Defendants, STEVE HANNERS and DAVID DEBOSE, asked the Plaintiff to sign for the package, which she did. Upon signing for said package, the Plaintiff was placed under arrest for possession of marijuana.

11. The Plaintiff filed her Verified Notice/Petition of Claim with Mayor of Eufaula, Jay Jaxon, Jr., on September 24, 2004 in compliance to and in accordance with Section 11-47-23 and Section 11-47-192, Code of Alabama, 1975. A copy of said Verified Notice/Petition of Claim is attached hereto as Exhibit 1.

COUNT ONE

UNLAWFUL ARREST

42 U.S.C. SECTION 1983

12. Plaintiff realleges paragraphs 1 through 11 and hereby incorporates them into this Count One as if fully set out herein.

13. There was no warrant for the arrest of Plaintiff on March 16, 2004. The arrest of

Plaintiff by Defendants, STEVE HANNERS and DAVID DUBOSE, as stated in the Factual Allegations above, was without reasonable grounds for said Defendants to believe Plaintiff had committed an offense and Defendants knew they were without probable cause to arrest Plaintiff.

14. Neither at the time of the arrest, or at any other time, was Plaintiff informed of the grounds for said arrest. No complaint, information, or indictment was ever sworn against Plaintiff alleging offenses occurring prior to the moment Defendants, STEVE HANNERS and DAVID DUBOSE announced to Plaintiff that she was under arrest.

15. Plaintiff was transported to the Eufaula Police Department where she was incarcerated and forced to make bond.

16. As a result of their concerted unlawful and malicious arrest of Plaintiff, Defendants STEVE HANNERS and DAVID DEBOSE deprived Plaintiff of her liberty without due process of law and deprived her of equal protection of the laws, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. Section 1983.

17. As a result of their concerted unlawful and malicious detention and confinement of Plaintiff, Defendants, STEVE HANNERS and DAVID DEBOSE, intentionally, or with deliberate indifference and callous disregard of Plaintiff's rights, deprived Plaintiff of her liberty without due process of law and deprived her of equal protection of the laws in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and 42 U.S.C. Section 1983.

WHEREFORE, ELLA McCRAY, demands judgment against Defendants, STEVE HANNERS and DAVID DEBOSE, jointly and severally, for compensatory damages in the amount of twenty million dollars and further demands judgment against each of said Defendants, STEVE HANNERS and DAVID DEBOSE, jointly and severally, for punitive damages in the

amount of fifty million dollars, plus the costs of this action and such other relief as the Court deems just and equitable.

COUNT TWO

NEGLIGENCE

42 U.S.C. SECTION 1983

18. Plaintiff realleges paragraphs 1 through 17 and incorporates them as if fully set out herein.

19. At all times relevant to this Complaint, Defendants, STEVE HANNERS and DAVID DEBOSE as police officers of the Eufaula Police Department, were acting under the direction and control of the Defendant City of Eufaula.

20. Acting under color of law and pursuant to official policy of custom, Defendant, CITY OF EUFAULA, knowingly, recklessly, or with deliberate indifference and callous disregard of Plaintiff's rights, failed to instruct, supervise, control and discipline on a continuing basis Defendant police officers in their duties to refrain from: (1) unlawfully and maliciously harassing a citizen who was acting in accordance with her constitutional and statutory rights, privileges and immunities; (2) unlawfully and maliciously arresting, imprisoning and prosecuting a citizen who was acting in accordance with his constitutional and statutory rights, privileges and immunities.

21. Defendant, CITY OF EUFAULA, had knowledge or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs conspired to be done, as heretofore alleged, were about to be committed. Defendant, CITY OF EUFAULA, had the power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and knowingly,

recklessly, or with deliberate indifference and callous disregard of Plaintiff's rights failed or refused to do so.

22. Defendants, CITY OF EUFAULA, directly or indirectly, under color of law, approved or ratified the unlawful and malicious conduct of the Defendant police officers heretofore described.

23. As a direct and proximate cause of the acts of Defendant, CITY OF EUFAULA, as set forth in paragraphs 18 through 22 above, Plaintiff suffered severe mental anguish, and humiliation in connection with the deprivation of her constitutional and statutory rights guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States and protected by 42 U.S.C. Section 1983.

WHEREFORE, Plaintiff, ELLA McCRAY demands judgment against Defendant, CITY OF EUFAULA, for compensatory damages in the amount of fifty million dollars, plus the costs of this action and such other relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this the 5th day of June, 2006.

/s/Benjamin E. Meredith
Benjamin E. Meredith(MER015)
Attorney for Plaintiff
707 West Main Street
Dothan, Alabama 36301
(334) 671-0289

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

/s/Benjamin E. Meredith
Benjamin E. Meredith(MER015)
Attorney for Plaintiff
707 West Main Street
Dothan, Alabama 36301
(334) 671-0289

CERTIFICATE OF SERVICE

I, Benjamin E. Meredith, certify that on June 5, 2006, I electronically served a copy of this document upon:

James H. Pike
COBB, SHEALY, CRUM & DERRICK, P.A.
Post Office Box 6346
Dothan, Alabama 36302-6346

Alyce S. Robertson
Office of the Attorney General
11 South Union Street
Montgomery, Alabama 36130

/s/Benjamin E. Meredith
Benjamin E. Meredith(MER015)
Attorney for Plaintiff
707 West Main Street
Dothan, Alabama 36301
(334) 671-0289